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Chairman: Mr. Tulbure ..... (Moldova)
later: Ms. Orina (Vice-Chairman) ..... (Kenya)

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The meeting was called to order at 10 a.m.

Agenda item 86: The rule of law at the national and international levels (*continued*) (A/61/121, A/61/121/Add.1 and A/62/261)

1. **Mr. Mongkolnavin** (Thailand) said that Thailand strongly believed that adherence to the rule of law at the national and international levels was essential for a peaceful and prosperous community. As noted by the 2005 World Summit, it was also a linchpin in the nexus between development, peace and security and was essential for the protection of human rights and fundamental freedoms.

2. At the international level, the Charter of the United Nations, together with the Universal Declaration of Human Rights and other multilateral treaties, old and new, must be adhered to and applied as guidance for global interactions. Promotion of adherence to the rule of law by the United Nations itself was therefore indispensable.

3. His delegation was pleased to note that a large of number of United Nations entities had been involved in work relating to the promotion of the rule of law, many of them playing a valuable role in enhancing capacity-building in Member States. His delegation also appreciated the recent establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. He looked forward to receiving more information on their work, especially in regard to the three "baskets" of rule of law activity identified by the Secretary-General in his report (A/61/636-S/2006/980).

4. At the national level, although the diversity of legal systems had to be respected, each State must do its part in the global quest for adherence to the rule of law. It was incumbent on each Member State to ensure that the rule of law was duly observed within its territory. Failure to do so could lead to a state of lawlessness or could breed or reignite conflicts. As global boundaries increasingly diminished, each country bore greater responsibility than ever to ensure that its actions did not affect its neighbours or the world at large.

5. Although Thailand had recently undergone a challenging period, its commitment to the rule of law had never lessened. Indeed, the Government had become even more vigilant in its adherence to the rule of law. The first-ever referendum on the country's new Constitution and the general election scheduled for year's end were strong testimony to that.

6. Over the years Thailand had striven continuously to foster the rule of law, both internally and internationally. In 2005 it had hosted the Eleventh Congress on Crime Prevention and Criminal Justice, which had led to the adoption of the Bangkok Declaration. During the 2007 Treaty Event, Thailand had deposited instruments of accession to the International Convention against the Taking of Hostages and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, thus re-emphasizing its firm and genuine commitment to the observance of international law.

7. Currently, Thailand was working with Chile, Sweden and South Africa in the Four Nations Initiative, which sought to promote improved governance and management of the United Nations Secretariat. The United Nations must practice what it preached, for good governance lay at the core of the rule of law. Moreover, better governance and management would help to enhance the Organization's credibility, both internally and externally. As part of the effort to improve governance, the United Nations should put into place a new system of internal justice to correct the drawbacks of the existing system and provide staff with a fair and professional dispute settlement process.

8. In its work on the rule of law, the Sixth Committee, should not duplicate activities being carried out by other United Nations bodies or elsewhere and should focus on concrete outcomes. Thailand supported the proposal made in that regard by Cuba on behalf of the Movement of Non-Aligned Countries (see A/C.6/62/SR.14).

9. **Mr. Arévalo** (Chile) said that his delegation welcomed the creation of the Rule of Law Assistance Unit, which would ensure continued and heightened attention to the topic. The rule of law was a common thread that ran through all relations between States, harmonious social interaction within States and the work of the United Nations and its various organs, which themselves were subject to the rule of law. Chile appreciated, in that regard, the steps being taken to bring the system for the administration of justice at the United Nations into line with international standards. It also applauded the Organization's concern about the criminal accountability of its officials on mission, and

it welcomed the measures adopted by the Security Council to improve the sanctions regime.

10. The rule of law was an extremely broad topic which could be addressed from many perspectives, and a precise and focused approach must be taken in order to deal with it effectively. The Committee should establish clearly what it intended to accomplish through its consideration of the topic. Otherwise, it might find itself engaged in lengthy and fruitless discussions that merely repeated firmly established principles. On the other hand, it would be inappropriate to introduce into the discussion elements which gave rise to particularist approaches or differential treatment of the various issues related to the rule of law at the national and international levels. The rule of law was founded on respect for certain universally accepted principles; unless they were strictly observed, the objectives of the exercise that the Committee was undertaking would not be achieved.

11. The first question that might be asked was whether the norms and institutions put in place by the international community were sufficient, or whether they needed to be augmented in some way in order to give real effect to the rule of law. Norms governing the threat or use of force, the peaceful settlement of disputes, human rights, international humanitarian law and international criminal law constituted a solid legal framework that might be said to meet the requirements for the rule of law in both its national and its international dimensions. However, for a variety of reasons, including lack of the means or the technical capacity to fulfil some obligations and failure to adopt domestic rules requiring compliance with international treaties, States did not always comply with their international obligations. The issue of non-compliance, and the reasons for it, should be one of the focuses for the Committee's consideration of the topic.

12. Other areas that might be examined in greater depth with a view to consolidating the rule of law included conflict prevention mechanisms, preventive diplomacy and multilateral mechanisms for dealing effectively with grave humanitarian crises. In that connection, strong support should be provided for the activities of the Peacebuilding Commission, particularly with respect to rebuilding judicial and law enforcement systems, which constituted the underpinnings of the rule of law.

13. The Committee might consider, as a sub-topic for discussion at a future session, the strengthening of domestic and international criminal justice systems as an effective means of combating impunity, the denial of justice or the failure to respect the rules of due process and other guarantees inherent in the rule of law.

14. **Mr. Lamine** (Algeria), reaffirming his delegation's attachment to the ideal of the rule of law and its desire to see respect for international legality prevail in inter-State relations, said that the newly established Rule of Law Assistance Unit would need to be strengthened and, above all, be protected from political considerations, particularly as the rule of law was a matter that had to do with the missions of various United Nations organizations, funds and agencies. It was a cross-cutting topic, about which a number of delegations had signalled the need for greater clarity in order to identify the perspective from which it would be approached.

15. The development of the rule of law at the national level contributed to economic and social development and to the furtherance of peace and justice. Better coordination was needed in order to respond to the needs of Member States seeking assistance in addressing gaps and deficiencies that might hinder the development of their administrative, political and judicial systems, especially in post-conflict situations. Certainly, the United Nations had a leading role to play in that regard, but in so doing it should seek to support, not supplant, local authorities, respecting the traditions and the social and cultural traditions of the country in question.

16. At the international level, the role of the International Court Justice was of fundamental importance in strengthening the rule of law. Some had even suggested that the Court should hear cases concerning the legality of actions taken by other United Nations bodies, creating a sort of separation of powers at the international level. The growing trend towards the threat or use of force necessitated a more proactive role for the Court in reinforcing the rule of law. The United Nations should set an example by, inter alia, ensuring respect for the functions and powers of each of its main bodies.

17. Algeria believed that the Committee should engage in more in-depth discussion of the topic and of the future relationship between itself and the Rule of

Law Assistance Unit before embarking upon discussions of specific aspects of the rule of law.

18. **Ms. Celis** (Bolivarian Republic of Venezuela) said that her Government hoped that the topic of the rule of law would be treated in a balanced manner and that the discussion would be grounded in the principles of self-determination of peoples and non-interference in the internal affairs of States. At the national level, her country attached great importance to international law as one of the sources of domestic law. The provisions of the international human rights conventions and other instruments had been incorporated into domestic legislation and enshrined in the Constitution.

19. At the international level, the realization of a system in which the rule of law prevailed would remain a utopian aspiration until a democratic regime was established within the United Nations. Excessive politicization of the Security Council had often hindered implementation of the mandates of the General Assembly, giving rise in recent years to repeated violations of the sovereignty of States, interference in their internal affairs and military occupations that were in clear violation of international law. The United Nations had thus far been unable to prevent the application of double standards with respect to compliance with internationally agreed rules, which had resulted in discrimination and selectivity, generating a climate of injustice and damaging the Organization's credibility. Only by democratizing and strengthening the United Nations would it be possible to ensure that international law was equitably applied and enforced.

20. **Ms. Mwaipopo** (United Republic of Tanzania) said that absence of the rule of law invited anarchy, impunity, abuse of human rights and disregard for the tenets of good governance and democracy. Strengthening of the rule of law was therefore crucial in order to foster greater freedom, sustained peace and security, particularly in countries emerging from conflicts.

21. Her delegation attached high significance to treaties and other internationally binding instruments and commended the United Nations Office of Legal Affairs for promoting their ratification and implementation through the organization of annual treaty events. It also applauded the work of the international tribunals for Rwanda and the former Yugoslavia, the Special Court for Sierra Leone and the newly established Special Tribunal for Lebanon in strengthening the international rule of law by combating impunity for individuals accused of committing the most serious crimes.

22. Her delegation also commended the International Criminal Court for its efforts to end impunity and encouraged cooperation between the Security Council and the Court to bring to justice the perpetrators of the gravest international crimes, namely, war crimes, crimes against humanity and genocide. The United Republic of Tanzania welcomed Japan's accession to the Rome Statute and encouraged all Member States to accept the Court's jurisdiction with a view to strengthening the rule of law.

23. At the regional level, the African Union and other subregional mechanisms were dedicated to promoting and upholding the rule of law. Her delegation was optimistic that the African Court on Human and Peoples' Rights and the East African Court of Justice, which the United Republic of Tanzania was proud to host, would contribute immensely to strengthening the rule of law, consolidating peace and reconciliation, and finally bringing economic prosperity to the African region.

24. Her Government was fully committed to human rights, good governance and the rule of law and had pursued numerous public-sector reforms, including programmes to improve its civil service, local government, public financial management, legal sector and health sector. Her delegation welcomed the establishment of the Rule of Law Assistance Unit and pledged its unflinching support for the work of the United Nations in strengthening the rule of law at the national and international levels.

25. **Mr. Mikanagi** (Japan) said that Japan strongly supported the activities of the United Nations with regard to the rule of law. Japan had been a strong backer of the International Court of Justice and continued to accept its jurisdiction. It also supported the International Tribunal for the Law of the Sea and its role in dispute settlement. In the area of criminal justice, Japan had supported the various ad hoc and hybrid international criminal tribunals, including the Extraordinary Chambers in the Courts of Cambodia. Japan was also providing technical support to help establish the rule of law in developing countries, especially South-East Asian countries. In addition, it

had recently become a party to the Rome Statute of the International Criminal Court. His Government appreciated the Court's role in combating impunity and hoped that the number of States parties to the Rome Statute would increase.

26. His delegation welcomed the activities of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit in strengthening United Nations efforts through better coordination. The Secretary-General's report (A/62/261) showed that many departments in the United Nations were carrying out rule of law activities. If duplications and other problems were occurring as a result of lack of coordination, the departments concerned must take measures to solve such problems. The various departments should, within their existing resources, continue to support the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. Japan looked forward to discussing the Secretary-General's report during the sixty-third session.

27. **Mr. Ben Lagha** (Tunisia) said that globalization and increased interaction among subjects of international law had made ensuring a commitment to an international order based on the rule of law more necessary than ever. Indeed, such a commitment was increasingly seen as the condition for peaceful coexistence of States.

28. Given that the rule of law was a cross-cutting topic that had to do with the activities of the United Nations in almost every area, his delegation welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit and underscored the need to provide them with the means necessary to enable them to perform their roles within the framework of a clear mandate and of regular and ongoing interaction with the General Assembly.

29. In view of the wide variety of issues that might be raised under the heading "the rule of law", the Sixth Committee should exercise great caution in identifying sub-topics for future discussion, taking care to give balanced treatment to the national and international dimensions and to avoid duplicating the discussions going on in other United Nations forums. The Committee should focus strictly on the legal aspects of the subject, taking a pragmatic approach that emphasized operational objectives, and should avoid giving the impression that it was trying to impose pre-established models on Member States.

30. One possible sub-topic that would encompass both the national and the international dimensions of the rule of law might be the provision of technical assistance to Member States that requested it, particularly those in post-conflict situations, and especially with regard to the incorporation of international instruments into domestic law. One way of choosing sub-topics might be to ask what value the Committee's discussion might add to the work on the topic under way elsewhere and what contribution the Committee might make towards enhancing the effectiveness of the rule of law activities undertaken by the various United Nations entities. In order to ensure that the Committee's work on the rule of law was effective and constructive, close interaction and synergy with the Rule of Law Assistance Unit would be imperative.

31. **Mr. Park** Hee-kwon (Republic of Korea) said that his delegation, believing that the rule of law was a safeguard for good governance in the national sphere and that it was a key element for maintaining peace and security in the international sphere, welcomed the Committee's discussion of the topic and regarded it as an important follow-up to the 2005 World Summit and a good opportunity for Member States to renew their commitment to the rule of law.

32. Activities in the three "baskets" identified by the Secretary-General in his report (A/61/636-S/2006/980) should be well coordinated. His delegation therefore strongly supported the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit and looked forward to seeing them both fully operational. Rule of law activities required adequate financial and human resources, and the Republic of Korea was committed to providing such resources to assist countries in building their capacity to promote the rule of law. It had provided official development assistance funds to a number of countries to help them in dealing with a variety of issues, including crime prevention, forensic investigations, criminal justice, control of drug-trafficking, prevention of money-laundering, maritime security and cyber-security, and it was the host country for the United Nations Governance Centre, which sought to enhance United Nations rule of law activities through the study of good governance and the sharing of best practices with Member States.

33. His delegation supported the idea of choosing sub-topics for focused discussion each year and

favoured the selection of "criminal justice at the national and international levels" as the sub-topic for 2008.

34. **Mr. Muburi-Muita** (Kenya) said that the Rule of Law Assistance Unit should be strengthened because the rule of law was the mainstay of good governance in any democratic system and was therefore pertinent to the management of global affairs. In fact, there was no viable alternative to it.

35. Since the role of the International Court of Justice in the peaceful settlement of disputes could not be overemphasized, he called on all Member States to recognize the Court's compulsory jurisdiction. Larger contributions to the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice would greatly advance the rule of law at the international level. The United Nations should itself make full use of the Court's competence by requesting advisory opinions and, in that connection, he was pleased that the possibility of authorizing the Secretary-General to request such opinions was being discussed. Furthermore, the jurisprudence emanating from the tribunals established by the Security Council should be absorbed into international criminal law.

36. The fact that rule of law and transitional justice initiatives had been incorporated into the mandates of recent peacekeeping and peacebuilding missions and that the General Assembly was examining the question of the criminal accountability of United Nations officials and experts on mission would undoubtedly promote the rule of law in United Nations missions.

37. A thorough evaluation of developing States' specific needs would heighten the effectiveness of the technical assistance and capacity-building measures of the United Nations. Steps should also be taken to facilitate the participation of those States in meetings of highly specialized agencies and bodies such as the United Nations Commission on International Trade Law (UNCITRAL). Since an awareness of the links between peace and development on the one hand and the cultural values and aspirations of societies on the other was central to maintaining the rule of law, he commended the General Assembly for recognizing the period September 2007 to September 2008 as the year commemorating the Ethiopian Millennium.

38. At the national level, his Government had introduced comprehensive reforms in the sectors of governance, law and order and justice. The purpose of those reforms was to strengthen the institutions dealing with corruption, boost the number of judges, magistrates and district courts, increase legal services at district level and improve the prosecution and litigation counsel service. The capacities of the police and prison services were being upgraded to meet the growing demands of the criminal justice system. Consideration was likewise being given to introducing small claims courts and a national legal aid scheme as a means of widening access to justice.

39. Lastly, he called on all States to use and expand the frameworks of fair rules already existing on many issues at the international level in order that the equity desired by all might be achieved.

40. **Ms. Naidu** (South Africa) said that a discussion of the rule of law at the national and international levels was extremely useful. Since the end of apartheid, national law in South Africa had been brought into step with international law and the courts had endeavoured to administer justice in a manner which upheld the spirit, purpose and ethos of the Bill of Rights, which had been inspired by the Universal Declaration of Human Rights.

41. The role of the United Nations in setting standards ensured that international law influenced the national judicial system and heightened the awareness that rights must be protected by law. That meant ensuring that disputes over rights could be submitted for adjudication to a competent, impartial and independent tribunal, and that State action could be analysed and justified rationally in a system whose operation could be tested for compliance with the law.

42. The establishment of the Rule of Law Coordination and Resource Group would fortify United Nations rule of law activities. For that reason, every effort must be made to bolster the Group's role in identifying areas of common concern and in facilitating cooperation and coordination. Her Government therefore supported the funding of the Rule of Law Assistance Unit. In addition, the Group's expertise could be utilized in countries emerging from conflicts to foster adherence to the rule of law and build confidence in the legal and judicial system, thereby creating the prerequisites for sustainable peace and development. In post-conflict situations, there was a need to deal with past abuses through formal and informal mechanisms for resolving grievances and to

create an impartial and accountable legal system. To that end, it was necessary to establish an effective law-enforcement apparatus, an open judicial system, fair laws, a humane correctional service and appropriate penalties for crimes.

43. **Ms. Wilcox** (United States of America) said that her Government strongly advocated the rule of law at the national and international levels. International law played a critical role in world affairs in as much as it was vital to the resolution of conflicts and was a powerful force in the search for freedom. The United States therefore helped to develop international law, relied on it and abided by it.

44. The United States strongly supported international legal mechanisms such as the International Court of Justice and approved of the Security Council's use of legal mechanisms and institutions to promote international peace and security by ensuring accountability for genocide, war crimes, crimes against humanity and terrorism. Her Government had pledged $5 million towards the start-up costs of the Special Tribunal for Lebanon, whose findings would be crucial in calling to account the terrorist bombers who had killed the former Lebanese Prime Minister Rafiq Hariri and others. It had also contributed over half a billion dollars towards the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.

45. The targeted sanctions regimes established by the Security Council contributed to the development of international law by imposing international obligations. Such sanctions remained a tool for championing international peace and security, and their adverse impact on innocent civilians could be minimized by careful targeting. Those regimes were an indispensable means of combating international terrorism and the proliferation of weapons of mass destruction and establishing stability in countries such as Sudan, Côte d'Ivoire, Liberia and the Democratic Republic of the Congo. Past concerns about the need for Security Council sanctions committees to follow fair procedures had been addressed, inter alia, in Security Council resolution 1730 (2006).

46. Other parts of the United Nations system were also influential in promoting the rule of law. For example, UNCITRAL had encouraged the emergence of international legal regimes which could enhance commerce in all geographic regions and for States at all levels of development, while the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime was spearheading efforts to help States to accede to and to implement international counter-terrorism conventions and protocols.

47. International law played an outstanding role in the United States Constitution and domestic law. In many instances the national courts were authorized to interpret and apply international law. Every year, her Government concluded hundreds of international agreements and treaties and it served as a depositary for approximately 200 multilateral treaties. Furthermore, the State Department's Treaty Office published useful information about the treaties to which the United States was a party on a public web page.

48. At the national level, the commitment of the United States to advancing the rule of law was demonstrated by its endeavours to assist other States to strengthen their legal, judicial and law-enforcement institutions and to combat the production and trafficking of illicit drugs. It was determined to promote the ratification and implementation of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption which, as the first legally binding global instruments on those subjects, served as new tools for amplifying international cooperation, including mutual legal assistance.

49. In order to achieve a more holistic approach to developing justice institutions, several Government organizations collaborated in the delivery of integrated and strategically focused rule of law assistance; they included the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the United States Agency for International Development (USAID). INL assisted countries in their efforts to strengthen institutions in the criminal justice sector, and every year it invested over $350 million in such programmes all over the world. USAID was investing over $301 million in more than 50 countries to promote broad-based reform of the justice system. Specialists from the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) from the Department of Justice had helped INL and USAID to

conduct rule of law activities worth $150 million in 2006.

50. The United States provided wide-ranging technical assistance in the area of the rule of law by helping States to train police, implement criminal justice reforms, secure human rights protection, improve court administration, promote judicial reform, train judges and lawyers, modernize legal education, create bar associations and improve access to justice. Her Government was striving to incorporate policing projects in programmes covering the rule of law and human rights, and it already had a solid track record of community-based policing programmes in Africa and Central America. Moreover, it was scrutinizing the role of traditional legal systems in contributing to the rule of law.

51. Although the practical recommendations contained in the Secretary-General's report (A/61/636-S/2006/980) concerning closer coordination of the many players within the United Nations system which provided assistance in respect of the rule of law were commendable, and although the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit were promising developments, the Unit should be funded from existing resources. The idea of enhancing quality control over United Nations documentation in the area of the rule of law was worth considering. Moreover, in view of the importance of bilateral assistance in the rule of law area, the United Nations should coordinate its rule of law activities with non-United Nations actors and donors.

52. The Sixth Committee's future work on the agenda item under consideration should be practice-oriented. Some of the topics proposed were not focused enough to provide a constructive basis for the Committee's work. It would therefore be better to concentrate on ways in which the existing United Nations rule of law assistance programmes could be better coordinated and made more effective. The inventory of the current activities of the parts of the United Nations system devoted to the promotion of the rule of law at the national and international levels contained in the Secretary-General's interim report (A/62/261) would provide a good starting point for the Sixth Committee's deliberations. Alternatively the Sixth Committee could centre its studies on transitional justice at the national level, since that was an essential issue for societies striving to emerge from conflict.

53. **Mr. Al Saied** (Kuwait) said that fostering respect for and compliance with the rule of law at the national and international levels was of the utmost importance in enabling the international community to live in peace and security, achieve economic growth and sustainable development, eradicate poverty and hunger and protect human rights.

54. Kuwait was a constitutional democracy where sovereignty was vested in the people. Everyone's rights and freedom were protected. Justice, freedom and equality were the main pillars of society. The Constitution embodied the rule of law, since it provided for the separation of the powers of the executive and the legislature and ensured the independence of the judiciary. All citizens had equal rights and duties. Freedom of the press and of expression were guaranteed, as was freedom of association.

55. His Government abided by international law. It upheld the principle of maintaining international peace and security and of not using the rule of law as a pretext to interfere in the affairs of other States, or to encroach on their sovereignty. All States should refrain from the use of force and the threat of its use and should settle conflicts between them by peaceful means.

56. The rule of law must be strengthened as it laid the foundations for social and economic justice and the enjoyment by every human being of the right to development. It was therefore vital to buttress the rule of law through the exercise of democracy within the United Nations system at all levels.

57. **Mr. Eriksen** (Norway), having welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit, commended the Unit's work thus far with regard to the coordination of United Nations rule of law activities. The Secretary-General's interim report (A/62/261) made it clear that such coordination needed to be strengthened. His delegation therefore looked forward to the continued implementation of the Unit's workplan, which contained a number of important tasks related to the rule of law, such as the development of a coordinated workplan for the entire United Nations system, the identification of priority gaps in the Organization's capacity and the establishment of best practices based on the international experience gained in connection with rule

of law assistance. The General Assembly should provide the Unit with sufficient resources to carry out its work effectively. Moreover, that funding should come from assessed contributions so as to ensure financial security.

58. With regard to the Committee's discussions on the rule of law at the next session, the sub-topics selected should be clearly defined and sufficiently narrow to ensure focused and streamlined discussions and to avoid the risk of duplicating the work of other forums. His delegation therefore attached great importance to the consultations regarding the current session's resolution on the rule of law.

59. Promotion of the rule of law was a priority for his Government and was therefore an integral part of its international activities. For example, Norway had established a standby force for civilian and human rights efforts in crisis situations. The force, composed of civilian experts, had provided rule of law assistance in Afghanistan, Bosnia and Herzegovina, Georgia and Moldova. The promotion of international criminal justice was another important objective. Norway supported the international criminal tribunals and the International Criminal Court by such means as advocating the widest possible accession to the Rome Statute. It was also necessary to preserve the legacy of the special criminal tribunals. In order to strengthen national capacities to investigate and prosecute international crimes, Norway was providing funding for the Court's Legal Tools Project, an important resource base for national authorities, practitioners of law and scholars around the world.

60. The International Court of Justice was the principal body entrusted with the task of upholding the rule of law at the international level. However, only 65 of the 192 States Members of the United Nations had accepted the Court's jurisdiction in accordance with article 36, paragraph 2, of its Statute. Since its establishment, the Court had clearly demonstrated its vital and constructive role in conflict resolution. Both Member States and the international community would benefit greatly from wider acceptance of the Court's jurisdiction, which could be tailored to meet the needs of individual States. Norway would continue its active efforts to promote acceptance of the Court's jurisdiction among Member States.

61. **Ms. Schonmann** (Israel) expressed strong commitment to the purposes and principles of the Charter of the United Nations and said that it was necessary to promote the concept of an international order based on the rule of law. Adherence to the rule of law was a cardinal element of her country's domestic legal system and a central component of its national security. Her Government was committed to the principle of legality, the balanced separation of powers, the protection of human rights and the guaranteeing of due process and access to justice for all. Fundamental human rights such as the right to liberty, freedom of expression and the right to privacy were protected by the basic laws of Israel and by a solid body of jurisprudence established by the Supreme Court. Promoting the rule of law at the national level was a vital means of furthering compliance with the international legal order.

62. Israel supported the numerous United Nations activities to consolidate the rule of law through the codification and development of international law. The rule of law was a fundamental element of conflict resolution, peacekeeping operations and nation-building in emerging democracies. The provision by States of legal assistance and training programmes for other States which were seeking to establish legal systems and enhance the rule of law might prove to be an enriching experience for all concerned, as well as a useful basis for dialogue.

63. Given the numerous actors participating in the wide range of rule of law activities, Israel supported the establishment of the Rule of Law Coordination and Resource Group. In its future work on the rule of law, the Sixth Committee would be well advised to adopt a practical approach focusing on technical assistance and capacity-building in order to make for greater compliance with international obligations.

64. **Mr. Shah** (Pakistan) said that upholding the rule of law at the national and international levels would ensure peace and security and equitable development opportunities for all. He therefore welcomed the establishment of the Rule of Law Assistance Unit. His Government supported the endeavours of the United Nations to promote the rule of law.

65. The different rule of law baskets should be dealt with in the relevant committees. Debate on those issues in the plenary required the establishment and coordination of dedicated rule of law teams. That would be a resource-intensive exercise which might prove difficult for small delegations, especially if more

baskets were added. He was therefore in favour of consolidating the agenda within respective committees.

66. The subject of the rule of law should be delimited in order to ensure that the committees' work in that area did not overlap. In addition it would be advisable for the Sixth Committee to identify the scope of the rule of law at the national and international levels. No new mandates should be created through the interpretation of existing mandates. His delegation did not support a monitoring role at national level for any United Nations subsidiary bodies or entities, apart from the United Nations Development Programme. Activities aimed at developing the rule of law at national level should be carried out only at the request of, and in close consultation with, the national or host Government. Lastly, as far as sub-topics for further consideration were concerned, he supported the proposal put forward by the Movement of Non-Aligned Countries.

67. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that the rule of law and justice was of crucial importance at the national and international levels. Adherence to the rule of law was essential for building an order where right would prevail over might and for progressing towards a secure and prosperous world. For the Islamic Republic of Iran, which was situated in a region long torn by conflicts imposed by supra-regional actors, replacing the rule of power with the rule of law was a matter of urgency.

68. The rule of law could be seen as a three-pronged concept: the rule of international law in inter-State relations; the rule of law at the national level and the rule of law at the United Nations. It was, however, necessary to reach a common understanding of the term before embarking upon any discussion of ways of strengthening the rule of law at each level. To that end, it might be wise to identify some common elements based on general principles of international law such as States' obligation to refrain from the threat or use of force in their international relations, to comply with the principles of universal respect for human rights and fundamental freedoms for all, to respect the equal rights and self-determination of peoples, and the sovereign equality and independence of all States, and not to interfere in the domestic affairs of other States. The principles of the Charter of the United Nations must also form the point of departure for any initiative to reinforce the rule of law at the national and international levels.

69. Buttressing the rule of law in international relations encompassed the sphere of lawmaking and the acceptance of international law. All States must therefore have the chance to participate in standard-setting processes and all States, irrespective of their size, must honour their obligations under international law. The adoption of a policy of compliance only when it was expedient, double standards and arbitrary enforcement undermined the very foundations of the international rule of law.

70. As far as the rule of law at the national level was concerned, it was every nation's sovereign right to decide on the appropriate ways and means of developing an efficient and fair legal system for enhancing the rule of law within its own jurisdiction, taking account of its specific cultural, historical, economic and social needs and conditions. Nevertheless, since States could and should benefit from each other's successful experiences, the United Nations could contribute in that respect by providing, at the request of the State concerned, technical assistance for capacity-building, especially with regard to the incorporation of treaty-based obligations into the internal legal system. The newly established Rule of Law Assistance Unit should help to coordinate the assistance available from various United Nations organs and bodies with a view to preventing duplication of effort; it should not, however, interfere in policymaking, which was the prerogative of the General Assembly.

71. The United Nations should promote the rule of law within the Organization as well. Staff members should have access to an efficient system for the administration of justice, but they must be held accountable for any misconduct. The steps taken to redesign the United Nations system for the administration of justice and to devise a mechanism for ensuring the criminal accountability of United Nations personnel were therefore welcome. On the other hand, the rule of law at the institutional level could be strengthened, only if the principal organs of the United Nations respected each other's mandate and competence, as defined in the Charter. The continuing encroachment of the Security Council on the functions of the other organs and its growing tendency to enter areas of standard-setting and lawmaking which fell within the purview of the General Assembly had prejudiced the Organization's overall functioning. The Security Council was bound by the Charter and it must

therefore exercise its powers in accordance therewith and refrain from intervening in the internal affairs of Member States.

72. As for sub-topics for further discussion, it was essential to identify the common elements, as well as the scope of the concept of the rule of law. At the same time, a balanced approach should be taken to the national and international aspects of rule of law. If the international rule of law was not defended collectively, the United Nations would be consigned to oblivion in the interests of domination and unilateralism and the rule of power would become the norm.

73. **Ms. Borjas Chávez** (El Salvador), noting that the 2005 World Summit Outcome emphasized the importance of the rule of law for peaceful coexistence and cooperation among States, said that there was a close link between the rule of law, peace and security and development. The strengthening of the rule of law was therefore in the interests of the entire international community. The issue should be considered in a comprehensive manner, taking into account the characteristics of the rule of law at both the national and the international levels and the links between the two.

74. At the national level, State action derived legitimacy from the fact that it was subject to the law. The hegemony of the law over the will of rulers and the existence of a predictable legal and institutional order were prerequisites for the observance of due process and the respect of human rights and fundamental freedoms.

75. Judicial independence was fundamental to the rule of law. For that reason, El Salvador had taken action, including the introduction of constitutional reforms, to establish and strengthen legal norms that would ensure an independent, transparent and impartial administration of justice system, and to ensure that administrative institutions complied with those norms.

76. The establishment and maintenance of the rule of law, including transitional justice at the national level, was vital in conflict and post-conflict situations. However, efforts to promote the rule of law should not be limited to those situations, because respect for the rule of law was also a means of preventing conflicts.

77. At the international level, respect for international law and the rule of law were inextricably linked. While States were sovereign entities, they were also interdependent and were therefore willing to become parties to international legal instruments. States should comply with the international legal order by fulfilling their international obligations in good faith and implementing international instruments effectively.

78. The United Nations, as the principal promoter of international law and a provider of technical assistance, in particular to developing countries, played a key role in ensuring the implementation of international legal instruments at the national level. In that regard, her delegation welcomed the establishment of the Rule of Law Coordination and Resource Group and looked forward to the Secretary-General's recommendations with regard to the rule of law at the national and international levels.

79. With regard to the Committee's future work on the agenda item, her delegation supported the idea of selecting one or two sub-topics for discussion each year while avoiding duplication of debates in other forums. The scope of the item should be clearly defined in order to allow for a focused discussion.

80. **Ms. Zabolotskaya** (Russian Federation) said that her country had consistently supported the principle of the rule of law. However, the rule of law could not be achieved without respect for the principles of the sovereign equality of States, non-interference in internal affairs and the settlement of disputes by peaceful means. International law should act as a deterrent to attempts to resolve international problems through the use of force.

81. International law did not allow for double standards and the imposition by some States of their rules of the game on other States. The issue of the rule of law should not be used as a tool for putting pressure on States. The Sixth Committee was the most appropriate forum for discussion of the issue and for the elaboration of decisions acceptable to the entire international community.

82. Many of the Organization's departments, programmes, funds and organs were already involved to a greater or lesser extent in rule of law activities. Her delegation welcomed the Secretary-General's efforts to coordinate those activities, in particular through the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. It would be useful if the Group could prepare ideas for improving the effectiveness of rule of

law activities already under way in the United Nations system. Such ideas could form the basis of the report to be submitted by the Secretary-General at the next session, which should pave the way for the identification of priority activities and the preparation of appropriate action by the Secretariat.

83. The Secretary-General's interim report (A/62/261) focused on rule of law activities at the Secretariat level and therefore did not touch on the work of international expert bodies that reported to the General Assembly such as the International Law Commission and UNCITRAL. The next report should therefore include the opinions of such expert bodies and of the International Court of Justice as to how they could help strengthen the principle of the rule of law in the context of the elaboration of a strategy by the General Assembly.

84. Lastly, it was important to decide on priority areas for the Committee's discussions with regard to the rule of law at the next session. One suitable topic might be "The importance of the implementation of international obligations through technical assistance and capacity-building".

85. **Mr. Medrek** (Morocco) said that a strong international legal order based on the rule of law, respect for human rights and the recognition of international law was vital for the achievement of a more just and prosperous world. The 2005 World Summit Outcome had demonstrated the commitment of all Member States to those principles.

86. In an era of globalization where interactions between States were essential for ensuring peace and stability, Member States needed to determine what was meant by the rule of law within the United Nations. Given the diversity and complexity of the issues involved, a pragmatic approach should be taken. No definition could claim to be applicable in all legal traditions, but inspiration could be taken from the Charter of the United Nations, international law and the general principles on which justice, democracy, human rights and the equality of all before the law were founded.

87. Given the variety of rule of law activities being conducted across the United Nations system and the number of actors involved, his delegation warmly welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. The latter should be provided with the support necessary to enable it to carry out its tasks for the long term. His delegation looked forward to receiving a consolidated report on the Organization's various rule of law activities at the sixty-third session.

88. The rule of law needed to be strengthened at both the national and the international levels, since the two complemented each other. It was not sufficient to elaborate new international norms; an effective system for monitoring their application was also needed. Strengthening of the rule of law at the national level was essential not only for peace and security but also for development and economic prosperity. Morocco was currently examining all of its national legislation in order to ensure that it complied with the country's international obligations and supported the democratic process.

89. He reiterated Morocco's support for an international order based on the rule of law and for the efforts of the United Nations system to strengthen the rule of law at the international level. The General Assembly and its Sixth Committee, the International Law Commission and UNCITRAL had a vital role to play in such efforts through their work on the codification and progressive development of international law. Efforts to promote accession to and implementation of international treaties were equally important for the strengthening of the international rule of law. The International Court of Justice played a vital role in ensuring respect for international law and the rule of law. His delegation also supported all efforts to strengthen international criminal justice.

90. The rule of law was a cross-cutting issue relevant to the Organization's activities in almost all areas. For the purposes of a focused discussion, the Committee should select specific sub-topics which enjoyed broad support among members. His delegation, while remaining open to any suggestions in that regard, considered that the sub-topic proposed by Cuba on behalf of the Movement of Non-Aligned Countries could help to define the nature and scope of the rule of law issue.

91. **Mr. Stastoli** (Albania) said that his delegation viewed the rule of law as the cornerstone of efforts to improve the Government's public functions with the involvement of civil society. The rule of law was crucial for the institutionalization of democracy and the establishment of legal certainty, legitimate

expectations and the equality of all before the law, at both the national and the international levels.

92. During the past two years, special emphasis had been placed on strengthening the rule of law in Albania, in line with the Government's European integration agenda. The difficult transition from a dictatorial to a democratic system had been a matter not only of ideology and economy but also of a change of mindset towards the rule of law. Currently, democracy in Albania was understood mainly in terms of reinforcing the rule of law and the institutions which safeguarded it, together with the proper checks and balances. Specifically, legislative and judicial reform was being pursued and a transparent legal system was being developed.

93. Internal and external oversight institutions carried out ongoing work to increase transparency in the court system. A decentralization process was under way and efforts were being made to combat corruption. In addition, measures were being taken to increase the level of professionalism and fairness in the judiciary. The Government had established or reinvigorated institutions such as the Office of the Ombudsman and the Civil Service Commission that aimed to safeguard the rights, freedoms and lawful interests of individuals. Albania considered the rule of law to be a prerequisite for democracy and the overarching objective for full integration with the European Union. In that context, it had established a highly advanced legislative system, together with institutions which would ensure its applicability. However, much work remained to be done in order to make those institutions fully operational.

94. At the international level, there was broad acceptance of the term "rule of law" but little consensus on its meaning and applicability. Sometimes it was used as a political ideal without being substantively defined. His delegation strongly supported the inclusion of the rule of law item in the Committee's agenda, but efforts should be made to ensure that the concept was not rendered meaningless by overuse and ideological manipulation. He reiterated his delegation's support for the establishment of an inventory of current United Nations activities relating to the rule of law.

95. The rule of law was at the core of the Organization's work, as reaffirmed in the 2005 World Summit Outcome and demonstrated by the fact that, in Timor-Leste and Kosovo, the United Nations had had direct responsibility for the administration of justice, including the control of police and prison services. The Organization also supported or substituted for domestic rule of law institutions and had created international criminal tribunals such as the International Tribunal for the Former Yugoslavia. Albania supported the idea of a comprehensive United Nations approach to strengthening the rule of law at the national and international levels.

96. **Mr. Adi** (Syrian Arab Republic) said that infringement by the Security Council of the competencies of the General Assembly was a violation of the rule of law at the international level, as were the use of force and occupation of the sovereign territory of States. There were multiple forms of the rule of law, and attention should be paid to each State's cultural heritage when providing technical and financial assistance. Above all, the rule of law should not be used as a tool for political pressure or interference in a State's internal affairs. Despite progress, the true rule of law had yet to be achieved in international relations, where the will of the strong continued to be imposed on the weak. He welcomed the establishment of the Rule of Law Assistance Unit and stressed that Member States needed to be kept informed of its activities.

97. **Ms. Stipniece** (Latvia) welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit, which would help ensure a coherent, efficient approach to rule of law activities across the United Nations system. The Group and the Unit should be provided with adequate resources from the regular budget to ensure their proper functioning. A paragraph to that effect should be included in the resolution on the rule of law to be adopted at the current session.

98. Her delegation was pleased to note that the 2007 annual parliamentary hearing organized jointly by the United Nations and the Inter-Parliamentary Union would focus on the theme "Reinforcing the rule of law in international relations: the key role of parliaments". The choice of that theme demonstrated the high priority placed on the rule of law by Member States.

99. *Ms. Orina (Kenya), Vice-Chairman, took the Chair.*

100. **Archbishop Migliore** (Observer for the Holy See) said that the mutually reinforcing values of peace, development and human rights were both the guiding

principles and the goals of the United Nations. The rule of law created the basis for mechanisms for the promotion of justice and peace and ensured the predictability and security needed for a stable economy and the protection of the dignity of every person, regardless of social, economic or political status. In an increasingly globalized society, where people from different cultures interacted more frequently, migration occurred on a global scale and international trade propelled rapid global development, relations among States must be regulated in order to ensure peaceful coexistence.

101. At the international level, the rule of law guaranteed respect for even the smallest of nations, safeguarding the right of all States to voice legitimate concerns as equals and restraining powerful nations from dominating weaker ones. Those principles were highly relevant to the ongoing reform of the Security Council and the revitalization of the General Assembly.

102. The United Nations played a vital role in the elaboration and implementation of international treaties. By ensuring that the principles of free consent, good faith and *pacta sunt servanda* were respected, the Organization guaranteed that relations between States were governed by reason, justice and fair negotiations rather than by fear, force or manipulation. In enforcing such treaties, the United Nations must be a neutral arbitrator and must respect the contracting intent and desire of the parties. A treaty body system that became opaque and unaccountable to States parties risked undermining the basic tenets of the rule of law and diminished the credibility and legitimacy of the United Nations as a promoter and guarantor of international law.

103. It was the duty of States to ensure that treaties were respected. Selective enforcement and observance of treaties were antithetical to the rule of law. It would be preposterous to claim observance of the rule of law at the national level if international treaties and international law were not observed. Moreover, the implementation of treaties in good faith had benefits that went beyond the rule of law: it was an excellent confidence-building measure, as it promoted trust among parties. That was particularly true in the area of disarmament, where the fear of non-compliance on the part of even one State party paralysed the disarmament and non-proliferation agenda. It was easier to ensure that others complied with their commitments if one complied with one's own.

104. However, there was a growing gap between the development of international law and the capacity of individual States to incorporate it into national legislation and implement it. Technical assistance to those countries was therefore of the utmost importance. In that regard, his delegation welcomed the establishment of the Rule of Law Coordination and Resource Group.

105. Efforts to combat terrorism were necessary but must be conducted on the basis of legal instruments designed to tackle the problem in a rational manner. It was sometimes difficult to apply the rule of law to terrorists who had little or no respect for it. However, States must not take steps that were antithetical to the very principles that gave them legitimacy through the rule of law.

106. Recent years had seen a greater focus on the rule of law at all levels. Although that focus had not always been accompanied by action, some progress had been made, particularly in the area of international criminal justice. Individuals and peoples whose rights had been violated, for example in cases of crimes against humanity, had access to a justice system that served the truth and banished fear, revenge, impunity and inequality before the law.

107. In the 2005 World Summit Outcome, the international community had affirmed its willingness to take timely and decisive action, through the Security Council, to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity when peaceful means proved inadequate and national authorities were manifestly failing to provide such protection. Sovereignty should not be understood as an absolute right and used as a shield against outside involvement. Rather, it should be understood as a responsibility not only to protect citizens but also to promote their welfare. Those principles should be further debated and codified. Through the creation of legal norms, the arbitration of legal disputes and the establishment of safeguards, especially when States failed in their responsibility to protect, the United Nations was called to advance the rule of law in all corners of the globe.

108. **Mr. Loris** (International Development Law Organization (IDLO)) said that IDLO had been established in 1983 and had been given a broad mandate by its current 18 member States to promote the rule of law and good governance in developing

countries, countries in transition and post-conflict countries. It enjoyed longstanding cooperation to that effect with other intergovernmental bodies, particularly in the United Nations system, as well as with a number of United Nations missions and peacebuilding initiatives. It was active in 41 countries through its IDLO alumni associations, which worked to promote the rule of law at the national and regional levels. He urged the United Nations and its Members to include those associations in consultations and initiatives to promote the rule of law at the national and international levels.

109. He announced the launch, following the current meeting, of the new Rule of Law Assistance Directory, available on the IDLO website, which provided the first comprehensive view of ongoing rule of law initiatives throughout the world. He hoped that the report of the Secretary-General on rule of law activities, to be submitted to the General Assembly at its sixty-third session, would take that Directory into account. IDLO for its part would use the report to expand its Directory.

110. He welcomed the establishment of the Rule of Law Assistance Unit, which would give his organization a contact point in the United Nations system, thereby creating synergies. IDLO would support the work of the United Nations to further the progressive development of the rule of law at the national and international levels and would be willing to participate in the Committee's annual focused discussions on related topics. One such topic might be devoted to methods for strengthening United Nations outreach to non-United Nations centres of excellence for the promotion of the rule of law.

Agenda item 108: Measures to eliminate international terrorism (*continued*)

Oral report of the Chairman of the Working Group

111. **Mr. Perera** (Sri Lanka) recalled that, at its first meeting, the Committee had decided to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and, in accordance with General Assembly resolution 54/110, to continue considering the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Working Group was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. It had held three meetings, at which it had had before it the reports of the Ad Hoc Committee on its sixth and eleventh sessions (A/57/37 and A/62/37), as well as the report of the Chairman of the Working Group during the sixty-first session of the General Assembly, reflected in the summary records of the Sixth Committee (A/C.6/61/SR.21). It had also had before it two letters from the Permanent Representative of Egypt, one addressed to the Secretary-General (A/60/329) and the other to the Chairman of the Sixth Committee (A/C.6/60/2).

112. At its first meeting, on 11 October 2007, the Working Group had decided to proceed with its discussion on outstanding issues relating to the draft comprehensive convention and then go on to consider the question of convening a high-level conference. At its second meeting, on 15 October 2007, the Working Group had received a report from the Coordinator on the results of the intersessional bilateral contacts regarding the draft comprehensive convention. On 16 and 17 October 2007, he, as Chairman, together with the Coordinator of the draft comprehensive convention, Ms. Telalian, had had bilateral contacts with interested delegations on the outstanding issues. At its third meeting, on 18 October 2007, the Working Group had received a report on the results of the bilateral contacts, followed by an exchange of views among delegations and a discussion on the question of convening a high-level conference.

113. The purpose of the intersessional bilateral contacts had been to gain further insights into the views of delegations on the elements of the non-paper on the draft comprehensive convention that had been presented during the eleventh session of the Ad Hoc Committee and to ascertain whether those elements could form the basis of an overall package which would help to move the process forward. During the discussions, which had focused mainly on draft article 18, some members had been concerned that the use of ambiguous language would leave the implementation of the draft convention open to abuse.

114. In her briefing on the intersessional contacts, on 15 October 2007, the Coordinator had explained that an effort had been made to bridge the different views held by delegations and had stressed that the draft convention had been designed to serve as a law

enforcement instrument that would operate in the context of other existing legal regimes.

115. In her statement on 18 October 2007, she had noted that the purpose of the informal bilateral contacts had been to clarify how the elements of the non-paper sought to be contextualized in the scheme under the draft convention, in the light of views expressed, during both the Committee's debate on measures to eliminate international terrorism and the bilateral contacts. The concerns expressed had included the importance of safeguarding the right of peoples to self-determination, the need to take into account "State terrorism", the satisfactory resolution of matters concerning potential impunity of military forces of a State and the need to distinguish clearly between activities falling within the scope of the draft convention and those governed by international humanitarian law.

116. She had explained that, in the overall scheme of the draft comprehensive convention, all those aspects were addressed in draft article 18, whose constituent elements had to be read as a whole: it would be incomplete if it was not related to the other articles of the draft convention, in particular draft article 2, which provided, for the purpose of the draft convention, the criminal law definition of acts of terrorism. Draft article 18, read in conjunction with draft article 2, had merely excluded from the scope of the convention certain activities that were regulated by other fields of law, it being understood that the draft instrument would have to operate in the context of an overall international legal framework where other rules of international law were also applicable. An attempt had been made in draft article 18 to safeguard, as far as possible, the application of such other law, by not rendering unlawful otherwise lawful acts under such law. At the same time it had sought to close any loopholes that might open possibilities for impunity for certain categories of persons.

117. The Coordinator had noted that paragraph 1 of draft article 18, which stated that nothing in the convention should affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter and international humanitarian law, was not contentious. It served to determine what was excluded from the scope of the draft convention, including exercise of the right of peoples to self-determination.

118. The definition of acts of terrorism in draft article 2 included acts undertaken by "any person". By excluding certain activities of armed forces in paragraph 2 of draft article 18, it reflected the clear understanding that such activities were governed by other rules of international law. It had nevertheless been found useful also to address the question of "military forces of a State", that was to say activities of "armed forces of a State" in peacetime and other persons covered by the definition of "military forces of a State" in article 1 of the draft convention. Moreover, under paragraph 3 of draft article 18, activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they were governed by other rules of international law, were not governed by the draft convention. It had been pointed out that in practically all jurisdictions military forces of a State were subject to a code of conduct separate from civilians and that that the phrase "inasmuch as they are governed by other rules of international law" embraced conduct that might be both lawful and unlawful under international law. Read in conjunction with paragraph 4, that provision did not make lawful otherwise unlawful acts, but simply recognized that other laws would apply and did not preclude prosecution under such laws. The addition proposed to paragraph 4, in the text submitted during the 2007 session of the Ad Hoc Committee, namely the reference to the fact that "acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws", together with the new preambular language based on the Convention for the Suppression of Acts of Nuclear Terrorism, sought to buttress the fact that there was an inner core of conduct which, if committed, would constitute a punishable offence, irrespective of the regime that would apply.

119. The Coordinator had further stressed that paragraph 2 of draft article 18 already established a demarcation between what was covered by the draft convention and activities of armed forces during armed conflict, "as those terms are understood under international humanitarian law". However, in order to provide further clarity a new paragraph 5, framed as a "without prejudice clause", had been added during the 2007 session of the Ad Hoc Committee. That paragraph consisted of a general "without prejudice" statement which had subsequently been elucidated with regard to rules of international law applicable for certain acts that would be lawful under international humanitarian

law. It had been clarified that the term "lawful" in that context should, from an international humanitarian law perspective, properly be understood with its double negative connotation as "not unlawful acts", since international humanitarian law did not in a literal sense define which acts were "lawful", but defined which acts were prohibited. However, in view of the need to distinguish those acts that were "unlawful" under paragraph 1 of draft article 2, the term "lawful" in paragraph 5 had been used as being more appropriate in the circumstances. That paragraph, together with draft article 18 as a whole, had been drafted in such a way as to provide the necessary direction to those that would be responsible for the implementation of the draft convention. It would be for the parties and consequently the judicial authorities to make interpretations in the light of the circumstances in specific cases. The key consideration was that international humanitarian law should not be prejudiced by the draft convention.

120. Some delegations had expressed support for the proposal made by the Coordinator during the eleventh session of the Ad Hoc Committee (A/62/37, annex B, para. 14), which they had considered to constitute a good basis for reaching a compromise solution on the text. It had been noted that the elements, together with the explanations provided by the Coordinator, offered a satisfactory clarification that the draft comprehensive convention did not interfere with the regime of international humanitarian law. The point had also been made that that clarification provided by the Coordinator offered a breakthrough in the deliberations and should be part of the *travaux préparatoires* of the draft convention.

121. Some other delegations had expressed doubt whether the proposal sufficiently addressed their concerns, in particular the need to distinguish clearly between activities falling within the scope of the draft convention and those governed by international humanitarian law. It had also been pointed out that the proposal still contained ambiguous language that might leave the implementation of the draft convention open to uncertainties. It had been acknowledged that there was need to study the proposal further, in the light of the clarifications provided by the Coordinator during the briefing, together with the proposal. Notwithstanding the difficulties, delegations had remained committed to the ongoing process and had supported the efforts for the early conclusion of the draft comprehensive convention. Several delegations had noted that the format of informal bilateral contacts constituted a constructive and satisfactory mechanism for advancing the process.

122. At its third meeting, on 18 October 2007, the Working Group had considered the question of the convening of a high-level conference, in accordance with General Assembly resolution 61/40, following the proposal to convene a special session of the General Assembly to examine and adopt an action plan for cooperation against terrorism.

123. The representative of Egypt had recalled that, although many international and regional conventions aiming to fight terrorism had been adopted, the number of terrorist acts had continued to increase, particularly in the most recent past; moreover, the comprehensive convention had not been yet finalized. Accordingly, it had been felt to be still necessary to strengthen international cooperation in order to combat terrorism in all its aspects, and not only from the security angle. The view had been expressed that the political, legal, social and economic aspects of the issue needed to be linked and that, in discussions within the United Nations system, the required balance had been lacking.

124. The representative of Egypt had stressed the key importance of sending a clear and strong message from the international community, which could take the form of an action plan and a declaration to be adopted during the proposed high-level conference. The sponsor delegation had noted that it was timely and relevant to convene such a high-level conference on the subject.

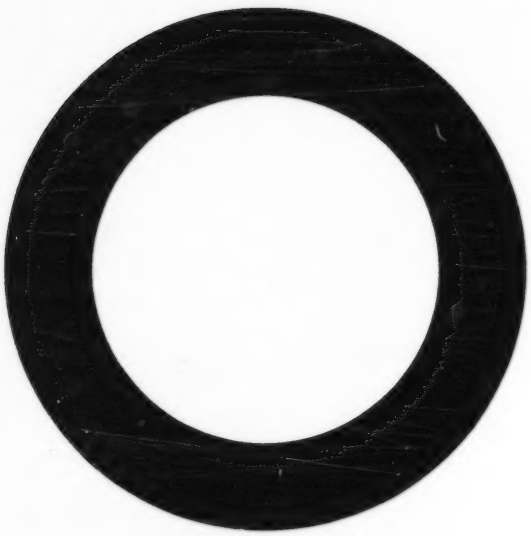
125. Some delegations had expressed their support for Egypt's proposal, observing that such a conference would offer an opportunity to look at the issue from a global perspective, as well as to define terrorism. It had been noted in that connection that terrorism could only be effectively combated on the basis of a holistic approach. Some delegations had emphasized that the convening of the conference should not be linked with, or deferred until, the adoption of the comprehensive convention but would, on the contrary, be a good opportunity to resolve outstanding issues.

126. Some other delegations, while not opposed in principle to the proposal, had maintained that such a conference should take place after the adoption of the comprehensive convention and that efforts should continue to focus on its negotiation. It had also been

pointed out that, following the adoption of the United Nations Global Counter-Terrorism Strategy, more time and resources needed to be devoted to its implementation rather than to the convening of another conference.

127. He expressed his confidence that the text proposed by the Coordinator at the last session of the Ad Hoc Committee, together with the very useful additional clarifications presented during the Working Group, contained the potential to facilitate agreement on the elements of an overall package and called on delegates to demonstrate the necessary political will to that end.

The meeting rose at 12.45 p.m.



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Summary record of the 17th meeting
Held at Headquarters, New York, on Friday, 26 October 2007, at 3 p.m.

Chairman: Mr. Tulbure ..... (Moldova)

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07-56553 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 80: Criminal accountability of United Nations officials and experts on mission (*continued*) (A/62/54, A/62/329 and A/60/980)

Oral report by the Chairman of the Working Group

1. **Ms. Telalian** (Greece) recalled that at its first meeting, on 8 October 2007, at the recommendation of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission, the Sixth Committee had decided to establish a working group to continue consideration of the report of the Group of Legal Experts established by the Secretary-General pursuant to resolution 59/300, taking into account the views expressed in the Ad Hoc Committee. The Committee had decided to open the Working Group to all States Members of the United Nations and members of the specialized agencies or the International Atomic Energy Agency.

2. The Working Group had decided that the members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chair. In view of the unavailability of Martin Roger (Estonia) to serve in that capacity and in order to ensure the representation of all regional groups, it had been decided to invite Ms. Minna-Liina Lind (Estonia) to join the other Friends of the Chair, Mr. El Hadj Lamine (Algeria), Mr. Ruddy Flores Monterrey (Bolivia) and Mr. Ganeson Sivagurunathan (Malaysia). The Working Group had paid tribute to Mr. Roger for his valuable contribution as Rapporteur of the Ad Hoc Committee.

3. The Working Group had had before it the report of the Ad Hoc Committee (A/62/54), the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980) and the note by the Secretariat on the criminal accountability of United Nations officials and experts on mission (A/62/329).

4. The Working Group had held four meetings, on 15 to 17 and 23 October 2007. At its first meeting, it had adopted its work programme and organized its work by addressing the clusters of issues considered in the report of the Group of Legal Experts, together with the note by the Secretariat, namely, (a) the scope *ratione personae*; (b) the crimes; (c) the bases for jurisdiction; (d) investigations; (e) cooperation among States and between States and the United Nations; (f) the form of instrument; and (g) the way forward. Part of the time had been devoted to informal consultations on a draft resolution.

5. Several delegations had alluded to their statements made during the plenary debate on the criminal accountability of United Nations officials and experts on mission (A/C.6/62/SR.6 and SR.7), reiterating the importance of the agenda item. Some had stressed the importance of avoiding duplication of effort and the need to take into account the work of the Special Committee on Peacekeeping Operations and the Ad Hoc Open-ended Working Group on Assistance and Support to Victims of Sexual Exploitation and Abuse. Certain delegations had expressed reservations regarding the adoption of definitions and terminology that had been used elsewhere, especially in instruments to which their Governments were not parties. Others had welcomed the approaches proposed in the note by the Secretariat, in particular the distinction between short- and long-term measures, suggesting that the former should be the focus of the Working Group at the current session while the latter should be the subject of future consideration in the context of the Ad Hoc Committee.

6. With regard to the scope of application *ratione personae*, some delegations had requested data on the types of personnel involved or alleged to be involved, whether military or civilian personnel; the crimes committed or alleged to have been committed and their seriousness; the extent to which investigations were conducted and information on follow-up, if any; whether offences had been committed in the course of official duties or while off-duty; and whether such crimes were committed in the mission area, at headquarters or in third States. Other delegations had not viewed statistics as of vital importance, preferring to focus on the incidents' impact on the victims and on the image and credibility of the United Nations, while still others had considered that statistical data would reveal the scope of the problem and assist in the formulation of short- and long-term measures.

7. Some delegations had sought to limit the Working Group's mandate to issues of criminal accountability arising in the context of peacekeeping operations, stating that the term "United Nations operation" was vague and needed to be clarified or that any reference to "operation" should be deleted. Other delegations had favoured a broader approach that would include operations conducted under Chapters VI and VII of the

Charter of the United Nations and all personnel involved therein, irrespective of their contractual status. Some delegations had been prepared to consider extending the scope to include personnel of United Nations funds and programmes; others had proposed to include not only personnel involved in a United Nations operation in a host State but also those who committed a crime in a third State while involved with a United Nations operation; and still others had maintained that the important consideration was to ensure that no one working for the United Nations should fall into a jurisdictional gap. It had been considered that the scope of application should be clearly defined in any negotiation of a legally binding instrument.

8. Some delegations had maintained that military and civilian police personnel working for the United Nations, even those classified as experts on mission, should be excluded from the scope of application *ratione personae* since, like members of national contingents, they were subject to the exclusive jurisdiction of the troop-contributing State. Other delegations, recognizing that the inclusion of military observers and civilian police was a delicate matter, had stressed the need for caution; international cooperation in matters of extradition and mutual assistance in judicial matters might be relevant to situations involving military personnel, including members of national contingents, who should not therefore be excluded a priori. A regime of cooperation that would provide for mutual assistance in respect of crimes committed by such personnel could be envisaged along with other issues to be addressed in a legally binding instrument.

9. At some delegations' request, the Secretariat had provided additional statistics on alleged misconduct by United Nations officials and experts on mission. In addition to the two sources of information already before the Working Group, namely the summary of statistics in paragraph 7 of the annex to the report of the Ad Hoc Committee (A/62/54) and the statistics cited in paragraph 8 of the note by the Secretariat (A/62/329), the Secretariat had circulated a copy of the annexes to the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/61/957), which contained statistics on certain types of allegations for 2006, and three informal tables containing further information on misconduct for 2006 and 2007. A general distinction had been drawn between statistics on allegations of sexual exploitation and abuse and those concerning other types of misconduct.

10. The six annexes to the report of the Secretary-General dealt with cases of sexual exploitation and abuse (SEA) in 2006. They contained details on United Nations entities requested to provide information on allegations (annex I); the number (14) and nature of allegations by United Nations entities other than the Department of Peacekeeping Operations (annex II); and the status of investigations into allegations reported in 2006 and involving personnel of United Nations entities other than the Department of Peacekeeping Operations (annex III); those statistics were based on information provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Volunteers and the World Food Programme (WFP). Annexes IV to VI provided information on allegations emanating from missions led by the Department of Peacekeeping Operations in 2006 (357; annex IV); the status of investigations into allegations reported in 2006 (annex V); and the nature of the allegations made by Department personnel (annex VI). Tables 1 and 2 provided a breakdown of allegations of non-SEA misconduct for 2006 (438) and for the period 1 January to 30 September 2007 (416), respectively, and table 3 provided further SEA statistics for the same period.

11. The need to distinguish between allegations of misconduct and completed investigations had been noted. Accordingly, while some of the annexes to the report of the Secretary-General (A/61/957) provided a breakdown of allegations received, annexes V and VI provided information from the perspective of completed investigations; of the allegations received in 2006, 82 investigations had been completed. No statistics concerning completed investigations of non-SEA allegations were available.

12. Annexes V and VI provided a breakdown of completed investigations involving allegations of SEA misconduct by civilians, United Nations police and military personnel, without distinguishing between military observers and members of military contingents. However, it had subsequently been clarified that 12 of the 357 allegations of SEA misconduct received in 2006 in the context of missions led by the Department of Peacekeeping Operations had

been made against military observers. Of those, two investigations had been completed and one allegation had been found to be substantiated. Table 3 indicated that of the 99 allegations reported in the context of peacekeeping operations from 1 January to 30 September 2007, 26 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 45 concerned military personnel who were part of national contingents (excluding military observers), none concerned military observers, 20 concerned the police component and 10 were classified as "unknown".

13. With respect to non-SEA misconduct, table 1 showed that of the 438 allegations reported in the context of United Nations peacekeeping operations from 1 January to 31 December 2006, 240 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 135 related to military personnel who were part of national contingents (excluding military observers), 8 concerned military observers and 55 concerned the police component. Table 2 showed that of the 416 allegations reported in the context of United Nations peacekeeping operations from 1 January to 30 September 2007, 291 concerned civilian personnel (including United Nations staff, United Nations Volunteers, contractors and consultants), 145 related to military personnel who were part of national contingents (excluding military observers), 18 concerned military observers, 42 concerned the police component and 10 were classified as "unknown".

14. With regard to the types of conduct alleged, annexes II and VI listed allegations of SEA misconduct such as sex with minors, exploitative sexual relationships, sex with prostitutes and rape. Tables 1 and 2 listed non-SEA allegations, including abuse of authority, assault, complex fraud, conflict of interest, fraud, harassment, infractions of United Nations rules and regulations, misuse or mismanagement of United Nations resources, negligence, theft and traffic-related misconduct. It had been noted that the Secretariat recorded statistics on allegations of "misconduct", not "crimes" per se. For example, tables 1 and 2 included infractions of United Nations rules and regulations which did not necessarily constitute criminal conduct. Nonetheless, it had been recalled that the Secretariat, in paragraph 8 of its note, stated that "while not all cases of misconduct constitute criminal activity, statistics in this area suggest that the problem is significant". The Working Group had been informed that although the Organization recorded whether the alleged misconduct was said to have been committed in or outside the host country, the vast majority of allegations emanated from within the area of the United Nations operation in question.

15. In reply to a question, a representative of the Office of Legal Affairs had explained that the term "United Nations operation" referred to operations defined by the competent organ of the United Nations and conducted under United Nations authority and control for the purpose of maintaining and restoring international peace and security.

16. Some delegations had stressed that the scope *ratione materiae* was closely linked to the scope *ratione personae*. Several delegations had favoured a generic approach rather than a listing of offences for the purpose of defining crimes *ratione materiae*. Such an approach, which would avoid the need for frequent updates to the list, could be based on the severity of punishment and the requirement of dual criminality. It had been pointed out, however, that a generic description based on severity of punishment alone would not be sufficient, especially in situations where the misconduct did not constitute a crime under the law of a particular jurisdiction. It had also been suggested that crimes could be defined using a combination of the generic approach and an indicative list; attention had been drawn to the vagueness of the term "serious crime".

17. While acknowledging that the subject matter had gained notoriety because of allegations of sexual exploitation and abuse, some delegations had seen no reason to limit the scope *ratione materiae* to assaults on the physical integrity of a person; they had suggested the inclusion of property crimes, embezzlement, trafficking, bribery and corruption, while drawing attention to the need to avoid duplication of efforts since the United Nations Office on Drugs and Crime also dealt with cases involving the corruption of United Nations officials.

18. In response to a request for clarification of the term "serious criminal activity", the Secretariat had noted that in its report on strengthening the investigation functions in the United Nations (A/58/708), the Office of Internal Oversight Services classified as Category 1 high-risk, complex matters and serious crimes such as serious or complex fraud; abuse

of authority; conflict of interest; gross mismanagement; waste of substantial resources; all cases involving risk of loss of life to staff or others; substantial violation of United Nations regulations, rules or administrative issuances; and any other serious criminal act or activity. Matters involving sexual exploitation and abuse had subsequently been given the status of Category 1 cases. Examples of recent examples of an "other serious criminal act or activity" included stabbings, abduction, arson and trafficking in drugs, weapons, gold, diamonds or human beings. It had been noted that the Organization's definition of a "serious criminal act or activity" might differ from those used by States.

19. Some delegations had considered that to the extent possible, priority should be given to the jurisdiction of the host State in deference to the principle of territoriality. It had been noted that the host State's exercise of jurisdiction would have advantages in terms of the availability of evidence and witnesses, while giving the victims a sense that justice had not only been done, but had been seen to be done; it should not be assumed too easily that the host State would be unable properly to exercise its criminal jurisdiction. According to another view, bearing in mind the need to ensure adequate protection to individuals entrusted with international functions, priority should be given to the jurisdiction of the State of nationality of the alleged offender (or the State of permanent residence, if the alleged offender was a Stateless person), since the host State in such circumstances was frequently unable to exercise its jurisdiction effectively.

20. Concerning the relationship between the basis for jurisdiction and the *aut dedere aut judicare* (extradite or prosecute) principle, the view had been expressed that the appropriateness of establishing a regime based on that principle required further study. It had been noted that the questions concerning conflicting jurisdictions would need to be addressed if a decision was taken to elaborate a binding instrument. Some delegations had mentioned the link between jurisdictional issues and the question of an immunity waiver, noting in particular that articles 22 and 23 of the 1946 Convention on the Privileges and Immunities of the United Nations set out the general criteria governing the waiver of immunities for officials and experts on mission; they had also stressed the obligation to respect local laws and regulations. According to another view, practice relating to the waiver of immunities should be clarified and made more uniform; it had been suggested that in accordance with Article 105, paragraph 3, of the Charter of the United Nations, guidelines might be drafted by the Sixth Committee or the International Law Commission. Some delegations had urged that the existing regime on immunities should not be altered.

21. In response to questions regarding waivers of immunity by the Secretary-General, attention had been drawn to the explanation provided by the Office of Legal Affairs and reflected in paragraphs 12 to 16 of the annex to the Report of the Ad Hoc Committee (A/62/54).

22. Some delegations had stressed the need to strengthen the host State's capacity to conduct criminal investigations. It had also been suggested that the victim should be informed, at least in general terms, of measures adopted or follow-up action taken as a result of an allegation. The need to update the relevant Office of Internal Oversight Services investigative manuals and protocols had been mentioned, and further information on ongoing measures aimed at enhancing the Office's investigative capacity had been requested. The Secretariat had replied that in response to a request by the General Assembly addressed to the Secretary-General, proposals for strengthening the Office, based on internal assessments and on a review conducted in 2007 by an external expert, would be submitted to the Assembly at its sixty-second session. During the period 30 June 2006 to 1 July 2007, the Office had taken steps to improve its operations, including by updating and expanding its investigation guidelines and standard operating procedures and establishing a jurisprudence library, a legislation library and a procedures and reference library.

23. Attention had been drawn to paragraph 8 of the annex to the Report of the Ad Hoc Committee, which described the practical constraints on the collection of data and subsequent production of statistics. It had been reported that the Department of Field Support, in cooperation with the Communications and Information Technology Section, had finalized the development of a comprehensive misconduct tracking system. The new system, which had recording, tracking and reporting features, would be accessible to conduct and discipline personnel as well as to the Office.

24. Cooperation was needed at all levels: between States; between States and the United Nations; and between the relevant departments, funds and programmes. It had been proposed that consideration should be given to drafting a model bilateral convention on extradition or model clauses to be incorporated into existing extradition treaties. It had also been observed that the exercise of criminal jurisdiction by the State of nationality of the alleged offender would require cooperation between that State and the host State during the investigation; perhaps mechanisms for States to report to the United Nations might be developed. There was a need for enhanced technical cooperation between States and the Organization, notably in developing the host State's capacity and providing adequate training to individuals deployed under the United Nations flag. Consideration of the form of a possible legal instrument had been deferred.

25. In their discussions about the way forward, delegations had expressed a general desire to focus on preparation of a draft resolution, bearing in mind the recommendations contained in the note by the Secretariat. Some delegations had been of the view that, for the time being, the focus should be on short-term measures; others, however, had stressed their interest in the elaboration of a binding instrument. It had been suggested that, as an alternative to a convention, the model status-of-forces agreement, the status-of-mission agreement, the memorandum of understanding and, as appropriate, the host agreement, might be amended in order to address matters concerning the criminal accountability of United Nations officials and experts on mission. On the other hand, it had been noted that the existing instruments addressed a different category of personnel and that the statistics revealing the nature of the problem would have implications for the form of the instrument to be adopted.

26. Several delegations had expressed support for some of the short-term measures mentioned in the note by the Secretariat, in particular the adoption of a General Assembly resolution strongly urging States to establish, at a minimum, jurisdiction over their nationals engaged in a United Nations operation who committed serious crimes as they were known and defined in their existing domestic criminal laws, where that conduct also constituted a crime under the laws of the host State. It had been stressed that the wording of such a resolution should be carefully considered and that its scope should be clearly limited to conduct committed by United Nations officials or experts on mission in the context of a United Nations operation. A preference had also been expressed for a resolution containing more general language than that proposed by the Secretariat. It had been pointed out that terms such as "serious crime" or "United Nations operation" would need to be clarified since they did not offer sufficient guidance for States; moreover, given that some of the short-term measures recommended had a bearing on the activities of other bodies, it would be necessary to avoid overlapping.

27. There had been general agreement to focus first on short-term measures to address the problem of criminal accountability. Accordingly, as Chairman of the Working Group, she had prepared a draft resolution on the basis of comments made by delegations and of the recommendations contained in the note by the Secretariat. Work on the draft resolution was proceeding in the context of informal consultations.

Agenda item 137: Administration of justice at the United Nations (*continued*) (A/RES/61/261; A/62/294)

Oral report by the Chairman of the Working Group

28. **Mr. Sivagurunathan** (Malaysia) recalled that the General Assembly, in its resolution 61/261, paragraph 35, had invited the Sixth Committee "to consider the legal aspects of the reports to be submitted by the Secretary-General without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters". In accordance with paragraph 36 of the resolution, the General Assembly also had decided to continue consideration of the item during the current session "as a matter of priority with the objective of implementing the new system of administration of justice no later than January 2009".

29. The Working Group had met 11 times from 8 to 19 and on 25 October 2007. At the first meeting the representatives of the Office of Legal Affairs and the Department of Management had introduced the report of the Secretary-General on the administration of justice at the United Nations (A/62/294) and had answered questions raised by delegations. The Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had attended the fifth meeting and had briefed

delegations about ongoing negotiations in ACABQ on the financial aspects of the proposed new system of administration of justice. Representatives of the Office of Legal Affairs, Department of Management and Office of Human Resources Management, together with the Secretary of the United Nations Administrative Tribunal, had attended the sixth meeting of the Working Group and had responded to queries from delegations.

30. As Chairman of the Working Group, he had prepared a list of issues as a basis for discussions. Delegations had addressed relevant paragraphs of the report, as well as the elements of draft statutes in annexes III and IV to the Secretary-General's report. Delegations had had the opportunity to make comments on each issue two or three times.

31. With regard to the scope *ratione personae* of the new system of administration of justice, some delegations had supported the Secretary-General's proposal that all personnel working for the United Nations should have recourse to the new system. The view had also been expressed that officials appointed by the General Assembly and experts on mission should have access to the system. Some delegations felt that the system should not cover individuals who were not staff of the United Nations and the funds and programmes, such as contractors, consultants, daily paid workers and experts on mission, whose claims would be distinct from claims brought by United Nations employees because the nature of their employment relationship was different. Further information would be necessary with regard to the type of grievances, applicable law and type of remedies currently available to such workers. Those delegations had further suggested that consideration should be given to alternative modes of dispute settlement which might be more appropriate or effective for those individuals, such as small claims commissions and expedited procedures. In that regard, paragraph 52 of the model status of forces agreement for peacekeeping operations (A/45/594) provided a mechanism for claims by locally recruited personnel. Some delegations had expressed the wish to have more information on that practice and wondered whether it was viewed by all concerned as fair and effective.

32. With regard to legal assistance for staff, some delegations had supported the Secretary-General's proposal. In their view, enhanced legal assistance provided by legally qualified full-time professionals would help to place staff and management on equal footing in the formal justice system. Some had referred to paragraph 23 of General Assembly resolution 61/261, in which the Assembly agreed that legal assistance for staff should continue to be provided and supported the strengthening of a professional office of staff legal assistance.

33. Assistance to staff could be provided either through an internal legal assistance system or by hiring lawyers from outside the United Nations. Some delegations had expressed the opinion that the proposed office of staff legal assistance would be beneficial to the United Nations and the staff. By providing timely advice to staff in cases not ripe for litigation, unnecessary proceedings could be prevented. Some other delegations had expressed the view that the United Nations did not have an obligation to employ lawyers to provide staff with legal assistance and representation and felt that the United Nations should not exceed what other international organizations or national jurisdictions provided.

34. It had been suggested that staff members seeking more individualized advice should continue to rely on the current voluntary system of legal assistance, which should be improved. The new office of legal assistance should absorb the functions of the Panel of Counsel, which should continue to provide training and coordination for volunteers. The Secretariat should develop better incentives for managers and staff to promote voluntary services. However, staff who wished to be represented by an attorney could hire a private attorney or seek assistance from United Nations associations. Reliance on independent outside representation would also avoid conflict of interests. The proposed office of staff legal assistance could maintain registries for private lawyers and United Nations staff volunteers interested in serving as a staff counsel. Staff associations could also provide staff with legal representation.

35. Divergent views had also been expressed as to whether legal assistance should comprise only legal advice or should also include representation in litigations, legal research and preparation of briefs. Some delegations had suggested that a distinction should be made between legal advice, which should be free of charge, and legal representation, for which staff members could contribute as appropriate. The view had also been expressed that if in a dispute a defendant

prevailed, the United Nations would have the burden of compensating the defendant for the expenses incurred.

36. Support had been expressed for the preparation of a code of conduct to guarantee the impartiality and independence of professionals working for the proposed office of staff legal assistance. Delegations generally supported the strengthening of the informal system of justice, which could result in reducing the accumulation of cases before the formal system. It had been suggested that the relationship between the informal and formal systems needed to be clarified, by inclusion of a provision in the statute of the United Nations dispute tribunal to regulate referral of cases by the Tribunal to mediation. Concerning terminology, the view had been expressed that the terms "extrajudicial" and "judicial" should be used instead of "informal" and "formal" system of justice. The term "quasi-judicial" had also been proposed.

37. With regard to the Ombudsman, some delegations had supported the appointment of the Ombudsman by the Secretary-General, noting that that process had already begun. The view had also been expressed that the appointment of the Ombudsman by the Secretary-General, who was a party to disputes, might raise questions about the independence and impartiality of the Ombudsman and that, in order to avoid real or perceived conflicts of interests, the Ombudsman should be appointed by the General Assembly. Concerning the possible role of the General Assembly, some delegations favoured the endorsement of the Ombudsman by the General Assembly after selection by a panel of experts. Others supported direct appointment of the Ombudsman by the General Assembly.

38. The view had also been expressed that the Ombudsman should be a person who enjoyed the trust of both staff and management. Under that view, the appointment of the Ombudsman by the General Assembly would not necessarily increase the trust of the parties involved. The procedure for the appointment of the Ombudsman proposed by the Redesign Panel was the best approach to gain the trust of both the employer and the employees.

39. Some delegations had expressed the opinion that the Ombudsman should have legal background, particularly in the area of labour law, as well as vast experience in mediation and negotiation procedures. Other delegations had not considered legal training essential but had stressed the importance of experience in mediation and negotiation.

40. Delegations had supported the creation of a mediation division in the Office of the Ombudsman. Some had stressed that decentralization of the system, including mediation, was an essential feature. Other delegations, while supporting the strengthening of the informal system, had expressed grave reservations concerning equal access of non-staff to the system.

41. Concerning the possible referral of cases by the proposed United Nations dispute tribunal to mediation, some delegations had taken the view that mediation was entirely voluntary and any referral by the tribunal would be contrary to such basic requirement. The tribunal could, however, encourage parties to settle their disputes by resorting to mediation. Other delegations had favoured authorizing the tribunal to refer disputes to mediation under certain conditions: willingness of the parties to a dispute; fixing a time limit for the resolution of disputes through mediation; and avoidance of referral if the dispute had previously been submitted to mediation.

42. Concerning qualifications of mediators, some delegations felt that legal training in labour law should be required, while others had expressed the view that mediators need not necessarily be lawyers but should have training in alternative dispute resolution mechanisms, including mediation.

43. Many delegations had agreed in principle with the Secretary-General's proposal regarding the qualifications of judges of the proposed United Nations dispute tribunal and United Nations appeals tribunal, with the proviso that gender and regional balance should be also respected in their nomination and selection. Some delegations had expressed the view that judicial experience was a paramount consideration with regard to qualifications. Therefore, the notion of equivalent experience in the Secretary-General's proposal entailed a risk of lowering the bar for qualifications. The view had also been expressed that the criteria regarding qualifications should be stated in flexible terms, and, as with other international tribunals, previous judicial experience should not be an absolute requirement. It had also been observed that the requirement of previous judicial experience was more important for dispute tribunal judges. Some delegations had expressed the view that a decision on the qualifications of judges would also depend on

whether cases before the dispute tribunal would be decided by a single judge or by a panel of three judges.

44. The Working Group had agreed that dispute tribunal and appeals tribunal judges should be elected by the General Assembly and that the election of judges should be staggered so as to ensure a partial periodic renewal of the composition of each tribunal. Several delegations had expressed the view that dispute tribunal judges' independence would be undermined if they were appointed by the Secretary-General as proposed in the Secretary-General's report.

45. As proposed by the Secretary-General in his report, delegations had agreed that judges should be removable only by the General Assembly, and exclusively on grounds of proven misconduct or incapacity. However, some delegations had questioned why only the Secretary-General could make a recommendation to that effect to the General Assembly. It had been proposed that the "grounds of proven misconduct or incapacity" should be carefully defined and that decisions on removal be subject to the qualified majority prescribed by rule 83 of the rules of procedure of the General Assembly.

46. The Working Group had agreed that in order to ensure that candidates met the required qualifications, it was essential that a mechanism should be identified for the compilation of lists of persons eligible for appointment to dispute tribunal and appeals tribunal judicial positions. Several delegations therefore supported the establishment of an internal justice council for the selection of judges. Some delegations, however, had raised doubts as to the composition of the council proposed by the Secretary-General, which in their view gave too much representation to the administration. In that regard, it had been suggested that the chairperson of the proposed council should be designated by agreement of the other members of the council, not appointed by the Secretary-General. A suggestion had been made that Member States should be represented on the proposed internal justice council. It had also been suggested that the council should present to the General Assembly a list of qualified candidates containing two or three times the number of candidates to be elected. As an alternative to an internal justice council, it had been proposed that nominations of candidates for the tribunals should be made directly to the General Assembly by Member States.

47. Regarding the terms of office of judges, the Secretary-General had proposed a five-year term, renewable only once, for both tribunals. In that respect, several delegations had expressed the view that a possibility of re-election or reappointment would threaten the independence of judges. A clear preference had emerged for a non-renewable term in order to avoid any real or perceived conflict of interest.

48. Despite extensive debate, no agreement had been reached on the issue of the number of judges who should decide a case in the first instance. In his report, the Secretary-General had proposed that a single judge would decide on procedural matters, while decisions on substance would require review by a panel of three judges. While some delegations favoured first-instance decisions being made by a single judge, other delegations preferred a panel of three judges so as to duly reflect diversity of nationalities, cultures and legal traditions in the decision-making process. It had also been observed that issues of substance and procedure could not always be clearly separated. Furthermore, the point had been made that any determination of the number of first-instance judges should take into consideration certain factors, such as the nature and level of legal assistance provided to dispute tribunal judges, as well as the question whether the appeals tribunal, as an appellate body, would have the power to review facts. As a possible compromise solution, it had been suggested that each case could be subject to a preliminary examination by a panel of three judges, who could then agree whether the case should be referred to a single judge.

49. Divergent views had been expressed as to the jurisdiction *ratione personae* of the future dispute and appeals tribunals. Discussions on that point had been similar to those regarding who would have access to the proposed administration of justice system. Concern had been expressed in the Working Group about the Secretary-General's proposal that *locus standi* should be conferred upon staff associations. It had been agreed that the issue required further consideration.

50. With regard to the jurisdiction *ratione materiae* of the proposed dispute tribunal, it had been observed that the language currently used in the draft elements of statutes entailed certain ambiguities. A representative of the Office of Legal Affairs had explained that there was no intention on the part of the Secretary-General to introduce any change in that respect.

51. The Working Group had not reached agreement on the grounds for appeal before the appeals tribunal. On the main disputed issue, whether the tribunal might consider only questions of law or whether it might also review facts, views had differed. Some delegations had felt that the appellate instance should not be given the power to review facts, while others had taken the view that parties should not be allowed to bring the facts twice before the dispute and appeals tribunals, but that the appellate body should be allowed to review serious errors in the categorization of facts, or consider material facts that the parties had been justifiably unaware of and hence unable to present to the dispute tribunal. It had been suggested that the appeals tribunal should at least be empowered to overrule the dispute tribunal's factual findings if they were clearly erroneous. A compromise proposal had been made in the Working Group. According to that proposal, while the jurisdiction of the appeals tribunal acting as an appellate body should be limited to questions of law, it should be granted the power to review facts to the extent that it found that the ascertainment of facts by the dispute tribunal had been arbitrary or based on an obvious error. Some delegations had expressed the view that any determination on that point would depend on the decision regarding the number of dispute tribunal judges who would decide a case in the first instance.

52. With regard to the remedy of specific performance, delegations had expressed the view that it required further consideration in determining the conditions under which the tribunals might order specific performance as an alternative to compensation. Some delegations had been concerned about any possibility of specific performance. Other delegations had questioned the Secretary-General's proposal that the power to order specific performance without compensation as an alternative remedy should be granted exclusively to the appeals tribunal.

53. Some delegations had expressed concerns about lifting the current limit of two years' salary for compensation, as suggested by the Secretary-General in his report. Some other delegations could agree to empower the tribunals to order a higher amount of compensation only in exceptional cases, to be determined in their respective statutes. It had been proposed that the two tribunals should be granted the power to issue decisions regarding the interpretation of their judgements or decisions upon the request of one of the parties.

54. Some delegations had expressed the view that further information was necessary regarding the Secretary-General's proposal that the dispute and appeals tribunals should be entitled to refer appropriate cases to the Secretary-General and heads of funds and programmes for "possible action to enforce accountability". Some delegations supported the Secretary-General's proposal that the dispute tribunal should be authorized to suspend action on a contested administrative decision upon request of the staff member concerned. However, the view had been expressed that the statute should make clear that the parties were not entitled by right to suspend a decision of the tribunal pending appeal.

55. Some delegations had expressed a preference for the establishment of a single registry for both tribunals, in the interests of cost-effectiveness. In their opinion, the functions of the registry should be limited to case management and should not include legal research or the preparation of summaries of facts for judges. Other delegations preferred separate registries for the two tribunals, on the grounds that the dispute tribunal would be decentralized and would function in other locations, whereas the appeals body would function in New York only. It had been observed that the functions suggested by the Redesign Panel (A/61/205, para. 131) for registries were different from the functions proposed by the Secretary-General in his report (A/62/294, para. 130). Concerning the question whether the two tribunals should have a single registry or separate registries, the view had been expressed that it would mainly depend on the type of functions assigned to a registry or registries. A single registry for both tribunals might suffice to deal solely with case management. Separate registries would be necessary if they were required to deal with case management and also assist the tribunals with legal research and the like.

56. Support had been expressed for the Secretary-General's proposal that the rules of procedure of the tribunals should be drafted by their judges in accordance with the statutes of the proposed tribunals. Some delegations favoured a role for the General Assembly regarding the adoption of the rules of procedure of the tribunals. Other delegations had stated that it was premature, at the current stage, to discuss

matters relating to the internal administration of the proposed tribunals.

57. With regard to transitional measures, it had been noted that at 1 January 2009, when the new system of administration of justice at the United Nations would begin to function, there would be an estimated 100 cases pending before the United Nations Administrative Tribunal. Those cases could either continue to be considered by the current Tribunal, in parallel with the new system, or be transferred to the new dispute tribunal. Some delegations had expressed preference for transferring these cases to the dispute tribunal, in the interests of cost-effectiveness and uniformity of proceedings, and in view of the fact that the staff members had lost their trust in the existing system.

58. Other delegations favoured preserving the old system in parallel with the new system because the transfer of pending cases to the new system at the beginning of its operation would overburden the new system and cause unnecessary delays in handling new cases. The point had been made that other organizations were using the current system and their views needed to be solicited before taking a decision. The view had also been expressed that litigants of pending cases should be encouraged to use informal systems for resolution of their disputes. Other delegations had said that it was premature to discuss transitional measures at the current stage, since ACABQ was considering the matter and had not yet come up with a concrete recommendation in that regard.

59. Negotiations on draft points of agreement would continue during informal consultations. If agreed, the points of agreement would be attached to a draft resolution or decision to be presented to the Sixth Committee for adoption.

The meeting rose at 4.20 p.m.